IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10538 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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VASANTBHAI BHANABHAI GAVRI

Versus

STATE OF GUJARAT

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Appearance:

MS SUBHADRA G PATEL for Petitioner

Mr. A.J. Desai, AGP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. S.G. Patel for the petitioner and learned AGP Mr. A.J. Desai for the respondents nos.1, 2 and 3.

The detention order dated 26-7-1999 passed by the respondent no.2-Commissioner of Police, Rajkot City

against the petitioner in exercise of powers conferred under Section 3(i) of the Gujarat Prevention of Anti Social Activities Act, 1985 ("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention served and supplied to the detenu under Sec.9(1) of "PASA", copy of which is produced at Annexure "C" inter alia indicate that the petitioner is alleged to have been involved in seven criminal cases registered at Pratapnagar Police Station, out of which, five cases are registered as non cognizable offences in between 5-1-1997 to 15-12-1998 whereas the other two cases, namely, CR no.574/98 was registered on 7-9-1998 for the offences made punishable under Secs.323 and 504 read with Sec.114 and 135(A) of the B.P. Act and CR no.360/99 was registered on 28-6-1999 for the offences made punishable under Secs.307, 326, 324, 323, 504, 506(2) and 114 of the I.P.C. and 135A of the Bombay Police Act.

3. That in consideration of the aforesaid material, the respondent no.2 as detaining authority has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of "PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It is contended at the Bar on behalf of the petitioner that the impugned order suffers from the vice of non application of mind, inasmuch as before passing the impugned order, the detaining authority has failed to consider the aspect of cancellation of bail as available under Sec.437(5) of the Criminal Procedure Code.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT ND ORS. 1995(2) G.L.H.1134), the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5),Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this court(Coram: C.K.Thakkar & A.L.Dave, JJ.).

6. On scrutiny of grounds of detention, it appears

that the petitioner was released on bail in connection with offence registered vide CR no.574/98 on 8-9-1998. That thereafter, the petitioner was arrested on 29-6-1999 in respect to CR no.360/99 and though order to release him on bail is passed, the petitioner being unable to furnish surety had remained in judicial custody. That the detaining authority has observed in the grounds of detention that in all probability the petitioner is likely to furnish surety and after getting himself released on bail is likely to repeat his criminal activities. However, no where in the grounds of detention it is stated that though the petitioner was released on bail proceedings for cancellation of said bail were resorted to and in spite of the same, the petitioner is likely to be continued on bail and is also likely to indulge to antisocial activities. The grounds of detention disclose the fact that in the year 1995-96, several prohibition cases were registered against the petitioner. On the said background cancellation of bail could have been claimed and bail could have been also claimed to be cancelled in respect to CR no.360/99 if the detaining authority had cogent material and compelling reasons to show that the petitioner is likely to indulge into antisocial activities after he is released on bail.

7. In view of the above stated facts, as the detaining authority has failed to consider the aspect of claiming cancellation of bail under Sec.437(5) of the Cr.P.C., there is non application of mind on the part of the detaining authority which has rendered the impugned order invalid.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the foregoing discussion, the petition is allowed. The detention order dated 26-7-1999 passed by the respondent no.2 against the petitioner-detenu is hereby quashed and set aside. The petitioner-detenu--Vasantbhai Bhanabhai Ghavri is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

(A.K.Trivedi,J.)
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